



National Grain and Feed Association

Arbitration Decision

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November 3, 2011

Arbitration Case Number 2566

Plaintiff: Markit County Grain LLC, Argyle, Minn.

Defendant: Michael a/k/a "Mike" Weinandt d/b/a Triple A Farms, New Prague, Minn.

Factual and Procedural Background

The plaintiff, Markit County Grain LLC (Markit), requested the entry of a default judgment in the amount of \$76,325 against the defendant, Michael a/k/a "Mike" Weinandt d/b/a Triple A Farms (Weinandt). The default judgment was granted for the reasons set forth below.

Markit submitted an arbitration complaint dated May 10, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Weinandt failed to perform on duly signed Markit contract nos. F000622 and F000633 for delivery of #1 milling spring wheat.

The front of each contract contained the following: "ARBITRATION: National Grain and Feed Association (See reverse Side, Item 2)." [Emphasis in original]. The back of each contract contained the following provision:

This contract is subject to the rules of the market to which the grain is shipped. This contract is also subject to the trade rules of the National Grain and Feed Association currently in effect, except to the extent the same are in conflict with the terms and expressed hereto.

Acting upon Markit's complaint, NGFA prepared an arbitration services contract and submitted it to Markit for execution. By certified mail dated June 2, 2011, NGFA also sent to Weinandt a letter providing notice of these proceedings with copies of Markit's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from Markit, NGFA then sent it with accompanying corre-

spondence and a copy of the June 2 mailing and attachments to Weinandt by Federal Express delivery on June 16, 2011. Federal Express confirmed that this mailing was delivered on June 20, 2011.

On July 11, 2011, NGFA sent to Weinandt another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on July 13, 2011. NGFA's letters of June 16 and July 11, 2011 to Weinandt specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Weinandt, or any indication that a response was forthcoming, NGFA sent yet another notice to Weinandt on Aug. 4, 2011 by Federal Express delivery. This notice further specifically stated as follows:

NGFA Arbitration Rules 5(d) and (e) provide for the entry of a default judgment when a party fails to execute the arbitration contract and pay the service fee within fifteen (15) days. Based upon the lack of any response from you thus far, we must anticipate that you do not intend to respond. ***This is our last attempt to elicit a response from you. A default judgment may be entered against you at any time, which the Plaintiff may enforce in a court of law.*** [Emphasis in original].

Federal Express confirmed that this mailing was delivered to Weinandt on Aug. 8, 2011.

NGFA has yet to receive an executed arbitration services contract from Weinandt, despite the repeated attempts by NGFA to contact Weinandt.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of Markit's status as a NGFA active member.

Markit properly and in a timely manner filed its complaint under NGFA Arbitration Rules Section 5(a). Pursuant to Section 5(b), the NGFA then submitted an arbitration services contract to the parties. Section 5(d) states that, "it shall be the duty of both parties to complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." Markit properly executed and returned the arbitration services contract. Weinandt refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule Section 5(e) provides for the following:

Where a party fails to pay the arbitration service fee and/or fails to execute the contract for arbitration, the

National Secretary may without further submissions by the parties enter a default judgment or such other relief as the National Secretary deems appropriate.

As it appeared that Weinandt made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Weinandt was proper and warranted.

Therefore, on Oct. 5, 2011, NGFA entered a default judgment against the defendant. The defendant was also advised that NGFA Arbitration Rule Section 5(e) sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered under this provision may apply for vacation of the default judgment within fifteen (15) days of entry of the default judgment." In this case, the defendant did not apply to vacate the default judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Markit County Grain LLC is awarded judgment against Michael a/k/a "Mike" Weinandt d/b/a Triple A Farms for \$76,325.
2. Interest on the judgment shall accrue at the statutory rate available for judgments in the applicable jurisdiction from this date until paid in full. This award is not intended to preclude the plaintiff from pursuing an additional award for interest, legal fees or costs in a court of law.

Dated: October 5, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary